

Local Government Employee-Management Relations Board E-Newsletter

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On the Horizon

The next meeting of the Board will be held on Tuesday, June 9th through Thursday, June 11th in Las Vegas. The agenda for this meeting will be issued on June 1st. The Board will conduct two hearings at this meeting. The first will be A1-046123, Nye County Law Enforcement Association v. Nye County. In a previous case between these two parties, the Board held that Nye County did not follow state law by consulting with all its unions in determining whether to allow Juvenile Probation Officers to break off from the NCLEA and form their own union. In this follow-up case the NCLEA alleges that Nye County did consult with the various unions but that its meetings were perfunctory and not in good faith. Nye County now alleges that Juvenile Probation Officers are part of the judiciary and cannot be in a union at all.

The second case is A1-046113, Education Support Employees Association and the Police Officers Association of the Clark County School District v. Clark County School District. The two unions allege that CCSD has not provided information needed for bargaining in violation of NRS 288.180.

Recent Decisions

*Please note that these summaries are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. The Board issued several notable decisions this month:

A1-046116; David O'Leary v. Las Vegas Metropolitan Police Department. O'Leary was a captain who had worked at Metro for almost 25 years with a clean record. In the summer of 2013 he was approached by a friend, DJ Ashba, the lead guitarist for Guns N' Roses, who was looking for a helicopter ride to the Grand Canyon for part of a marriage proposal to his girlfriend. O'Leary learned that a private company could not do this. However, an employee in Metro's air unit volunteered a fly-along for this purpose as the department had done a number of fly-alongs for individuals. A few days after the fly-along Ashba posted a statement on social media about the event. The story ended up going viral. That same day O'Leary received a telephone call from his immediate supervisor about the posting.

Metro alleged that O'Leary had acted inappropriately in arranging the fly-along, among other things. After refusing requests to resign, O'Leary later was only sustained that the fly-along brought discredit to the department and that he used his department vehicle to transport passengers. In December O'Leary was again asked to resign or else be demoted. O'Leary thereupon resigned. Later he claimed a unilateral change and discrimination based on political or personal reasons. The Board denied the unilateral change allegation as Metro's breach was an isolated incident. However, the Board agreed that O'Leary was discriminated against for political reasons; namely the fallout from the social media posting and how that affected the department's attempt to get the More Cops tax passed. O'Leary was thereupon reinstated with backpay.

Inside This Issue

- 1 **On the Horizon** - Learn about our upcoming meetings
- 1 **Recent Decisions** – Read about significant decisions just issued by the Board
- 2 **Regulations Workshop Concerning Election Rules** – Read about the upcoming workshop
- 3 **In the Queue** - See the cases that are waiting to be heard by the Board
- 3 **Annual Assessment Fee Set** – Read about the fee and the soon-to-be-issued invoices
- 3 **Collective Bargaining Agreements on our Website** - Update

Regulations Workshop Concerning Election Rules

The EMRB will be conducting a regulations workshop on Wednesday, May 27th at 1:30 p.m. The purpose of the regulation is two-fold. First, it proposes that any employee organization receiving a majority of the votes cast in an election be certified as the exclusive bargaining agent. Secondly, the proposed regulation would shift the cost of elections to employee organizations. Four alternatives related to this cost shifting are proposed for consideration. Below is the text of the proposed amendments:

Section 1. NAC 288.110 is hereby amended to read as follows:

288.100 Elections.

1. All elections conducted in accordance with subsection 4 of NRS 288.160 will be conducted under the supervision of the Board or its agent.
2. Any party may be represented at the election by observers selected in accordance with such limitations as the Board may prescribe.
3. Any observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. The ballots of challenged persons will be impounded.
4. Upon the conclusion of the election, the ballots will be counted in the presence of the parties or their observers and the Board's agent conducting the election. The agent will furnish parties with a tally of the ballots.
5. Except as otherwise provided in this subsection, the ballots must be kept for at least 6 months after an election, after which period the ballots may be destroyed. If a timely objection to the election is filed with the Board or a petition for judicial review concerning the election is filed in district court, the ballots must be kept until after the conclusion of any Board or court proceeding concerning the election.
6. Provisions may be made for a nonunion vote and for linguistic assistance.
7. ~~If the results are inconclusive, the Board will conduct a runoff election.~~ Subject to subsection 10 below, the employee organization, or nonunion vote option, which receives the majority of the votes cast in an election shall be certified as the exclusive bargaining agent for the employees within the bargaining unit. In any election where there are more than two choices on the ballot and none of the choices receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff election shall contain the two choices on the original ballot that received the largest number of votes. Subject to subsection 10 below, the employee organization which receives the majority of the votes cast in the runoff election shall be certified as the exclusive bargaining agent for the employees within the bargaining unit.
8. Within 5 days after the election, any party may file with the Board objections to the conduct of the election or conduct affecting the results of the election. The objections must be in writing and contain a brief statement of facts upon which the objections are based. A sworn original and four copies of the objections must be signed and filed with the Board. The party filing the objections shall serve a copy upon each of the other parties.
9. If challenges which affect the results of the election or objections raise a substantial question which cannot be resolved without a hearing, the Board may issue and serve notice of a hearing on these issues.
10. An employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit, pursuant to an election, if:
 - (a) Challenged ballots are insufficient in number to affect the results;
 - (b) No runoff election is to be held;
 - (c) No timely objections are filed; and
 - (d) The election demonstrates that the employee organization is supported by a majority of the employees within the particular bargaining unit using the standard as mentioned in subsection 7 above.

In addition, there is also a proposed subsection 11, which would shift the cost of the election to employee organizations. Alternative A would split the cost between competing employee organizations. Alternative B would shift the cost to the petitioner. Alternative C would shift the cost to the winner of the election. Finally, Alternative D would shift the cost to the loser of the election. Moreover, alternatives A and B would require the employee organization(s) to front the estimated cost of the election. Then after the election is over a reconciliation of the actual costs would be made by the Commissioner and either a refund issued or else an invoice for the additional costs would be issued.

Please call our office or visit our website for more details on the meeting location. Please note that the workshop is but the first step in the adoption of any changes in the regulations and we welcome all interested persons to both attend the workshop and to voice their ideas and suggestions on the proposed regulation. Written comments are also welcomed.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

The Board will hear two cases in Las Vegas in June: A1-046123, Nye County Law Enforcement Association v. Nye County and A1-046113, Education Support Employees Association and Police Officers Association of the Clark County School District v. Clark County School District.

On July 14-16 the Board will hear A1-046130, SEIU, Local 1107 v. Clark County.

On August 11-13 the Board will hear A1-046133, SEIU, Local 1107 v. Southern Nevada Regional Housing Authority.

Finally, the Board will hear three cases on September 15-17, with each case taking one day: A1-046138, Education Support Employees Association v. Clark County School District; A1-046119, Shannon D'Ambrosio v. Las Vegas Metropolitan Police Department; and A1-045847 through A1-056864, Deborah Boland et al. v. SEIU, Local 1107.

The following cases are waiting for the Board to deliberate and decide on the status of the case, including, but not limited to, dismissal of the case or the granting of a hearing on the complaint. Please note that the order listed below is not necessarily the order in which the cases will be heard:

In Las Vegas:

A1-046120, IAFF, Local 1908 v. Clark County

A1-046138, Education Support Employees Association v. Clark County School District

2015-001, Bramby Tollen v. Clark County Association of School Administrators et al.

Annual Assessment Fee Set

At its May meeting the Board unanimously voted to keep the annual assessment fee at its current rate of \$6.75 per employee. This is the third year in a row that the fee has been at this amount. Proceeds from this fee fund the agency in lieu of the agency receiving monies from the general fund. Like last year the agency will be issuing invoices to each of the 170 local governments on Friday, June 19th and payments are due by July 31st. So watch for your invoice in the mail! If you believe that your local government needs additional time please call our office and we can make arrangements to issue your particular invoice earlier than June 19th.

Collective Bargaining Agreements on our Website - Update

Last month we reported that the agency had begun the process of uploading more than 200 current collective bargaining agreements onto our website and that this is the first time ever that the collective bargaining agreements will have been so readily accessible to the public. So far we have uploaded all of the school district, fire and police collective bargaining agreements. We are now in the process of uploading all such agreements for the general (white and blue collar) employees. The agreements can be located under the Resources section at the bottom of our home page.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.